GAHC010005642025

2026:GAU-AS:15447

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/160/2025

TAPASH KUMAR BHUYAN
AGED ABOUT 56 YEARS,
S/O LATE KAMALA KANTA BHUYAN,
R/O SUPERINTENDENTS RESIDENCE,
CENTRAL JAIL, NAGAON, P.O. AND P.S. NAGAON,
DISTRICT NAGAON, ASSAM, PIN - 781003
MOBILE PHONE NO. 9954322330

VERSUS

THE STATE OF ASSAM AND 12 ORS
REPRESENTED BY ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM,
HOME AND POLITICAL DEPARTMENT,
JANATA BHAWAN, DISPUR, GUWAHATI- 781006

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME (B) DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI - 781006

3:THE INSPECTOR GENERAL OF PRISONS
ASSAM
ASSAM PRISONS HEADQUARTERS

KHANAPARA
GUWAHATI - 781022

4:GAUTAM BORA
DEPUTY INSPECTOR GENERAL OF PRISONS (RANGE)
ASSAM

ASSAM PRISONS HEADQUARTERS

KHANAPARA
GUWAHATI - 781022

5:AJIT KUMAR DOLEY
DEPUTY INSPECTOR GENERAL (RANGE)
JORHAT
BARBHETA
JORHAT
ASSAM- 785004

6:RANJIT BURAGOHAIN
ASSISTANT INSPECTOR GENERAL OF PRISONS
ASSAM
ASSAM PRISONS HEADQUARTERS

KHANAPARA
GUWAHATI - 781022

7:UTPAL DOWARAH
SUPERINTENDENT OF JAIL
CENTRAL JAIL

GUWAHATI
P.O. SAUKUCHI
GUWAHATI-781040

8:FAROQUE SAYEDUL HAQUE
SUPERINTENDENT OF JAIL
CENTRAL JAIL

JORHAT
BARBHETA
JORHAT
ASSAM - 785004

9:BAPAN CHAKRABORTY
ASSISTANT INSPECTOR GENERAL OF PRISONS
ASSAM
ASSAM PRISONS HEADQUARTERS

KHANAPARA
GUWAHATI - 781022

10:KALYAN CHOUDHURY
SUPERINTENDENT OF JAIL
DISTRICT JAIL

MANGALDAI
MANGALDAI
DARRANG

ASSAM- 784125

11:JOGENDRA NATH
SUPERINTENDENT OF JAIL
DISTRICT JAIL

GOALPARA
GOALPARA
ASSAM- 783121

12:MUKUL BHUYAN
SUPERINTENDENT OF JAIL
DISTRICT JAIL

SONARI
OLD TOWKAK
SONARI
CHARAIDEO

ASSAM-785690

13:MANAS KUMAR DAS
SUPERINTENDENT OF JAIL
DISTRICT JAIL

MORIGAON
P.O. MANIPUR
MORIGAON

ASSAM 78210

Advocate for the Petitioner : MR P R SARMA, MR. A HUDA,MS P DEVI

Advocate for the Respondent : GA, ASSAM, MR D J BORO (R-4,6,9,10),MR. J K GOSWAMI(R-4,6,9,10)

– **B E F O R E** –

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner : Mr. P R Sarma, Advocate.

For the Respondent(s) : Mr. D Nath, Sr. Govt. Advocate assisted by Mr.T Sonowal for Respondent Nos. 1 & 2. Mr. D J Boro, Ms. C Saikia, Advocates for Respondent Nos. 4, 6, 9 & 10.

Date on which judgment is reserved : **07.10.2026**

Date of pronouncement of judgment : **13.10.2026.**

Whether the pronouncement is of the operative part of the judgment ? : **No.**

Whether the full judgment has been pronounced : **Yes.**

JUDGMENT & ORDER (CAV)

Heard Mr. P R Sharma, learned counsel appearing for the petitioner. Also heard Mr. D Nath, learned Senior Government Advocate for the State respondents as well as Ms. C Saikia, learned counsel appearing on behalf of Mr. D J Boro, learned counsel for the respondent nos. 4, 6, 9 & 10.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is seeking direction to the respondents to consider his representation dated 16.11.2024 to consider the inter-se seniority of the petitioner from his initial date of appointment i.e., 22.09.1994, instead of 22.12.2000, i.e., the date of substantive appointment and for promotion to the post of Deputy Inspector General of Prisons, (Headquarters), Assam.

3. The brief facts of the case are that the petitioner was initially appointed on a temporary ad hoc basis as Assistant Jailor at Hailakandi on 22.09.1994 by the Inspector General of Prisons, Assam, under Regulation 3F of the Assam Public Service Commission (Limitation of Functions) Regulation, 1951 (hereinafter referred to as "the 1951 Regulation"). Pursuant thereto, the petitioner joined the service on 01.10.1994, and his service was extended from time to time. However, on 01.10.1996, he was served with a notice of termination, which he challenged before this Court in C.R. No. 4926/1996. In the said proceeding, this Court directed the respondent authorities not to oust the petitioner from service. Subsequently, the Inspector General of Prisons, Assam, appointed the petitioner on an ad hoc basis as Assistant Jailor at the District Jail, Barpeta.

4. Thereafter, vide Office Memorandum dated 10.06.1998, the concerned departments under the Department of Personnel, Government of Assam, were

directed to forward draft advertisements to the Assam Public Service Commission (APSC) within four months of appointments made under Regulations 3F and 4D of the 1951 Regulation, with a view to facilitating the early regularisation of such appointees. Accordingly, by letter dated 27.11.1998, the petitioner was called upon to appear in the examination for regularisation of his service. Having appeared in and successfully cleared the said examination, the petitioner was appointed to the post of Assistant Jailor, along with other similarly situated persons, vide order dated 22.12.2000 issued by the Inspector General of Prisons, Assam.

5. However, for the purpose of determining his inter se seniority, the petitioner's service was reckoned from 22.12.2000, being the date of his regular appointment, instead of his initial date of appointment, i.e., 22.09.1994. Consequently, in the final gradation list published on 23.08.2012, several of his juniors were placed above him. Being aggrieved thereby, the petitioner, along with another similarly situated person, approached this Court by filing a writ petition, being WP(C) No. 4932/2012, seeking, inter alia, the setting aside of the said gradation list and the fixation of his seniority with effect from 22.09.1994, together with consequential pay protection.

6. The said writ petition was disposed of by this Court vide judgment and order dated 06.12.2018, directing the Inspector General of Prisons, Assam, to consider the petitioner's claim for seniority after affording an opportunity of hearing to both parties, within a period of two months from the date of the judgment. Pursuant to the said direction, the petitioner submitted a representation dated 02.01.2020 before the Inspector General of Prisons, Assam, enclosing a copy of the aforesaid judgment and order. However, as no consideration was given to the said representation, the petitioner submitted another representation dated 16.11.2024 before the Secretary to the Government of Assam, Home and Political Department, seeking fixation of his inter se seniority with effect from his initial date of appointment. Since the respondent authorities have not considered the petitioner's representation till date, the petitioner has been compelled to institute the present writ petition.

7. Learned counsel for the petitioner submits that the petitioner having been continuously in service from his initial date of appointment till he was regularly appointed, the period of officiating service cannot be ignored for counting his seniority in the said post. In support of his aforesaid submission, he relies upon the decision of the Apex Court in the case of ***Direct Recruitment Class II Engineering Officers' Association -VS- State of Maharashtra and Ors.***, reported in ***(1990) 2 SCC 715***.

8. Learned counsel for the petitioner further submits that there was no fault on the part of the petitioner as he was diligently and uninterruptedly performing his duties since the date of his initial joining in the service upon being appointed under Regulation 3F of the 1951 Regulation and that the entire fault is with the respondent authorities in not initiating the procedure for regularization of the petitioner and hence, the petitioner ought not be deprived of his seniority position in the gradation list for the post in question *qua* his juniors.

9. *Per contra*, the learned counsel appearing for the State respondents submits that the officiating period of the petitioner's service under Regulation 3F of the 1951 Regulation cannot be counted for determination of the inter-se seniority of the cadre and the seniority of the petitioner is entitled to be considered from the date of his appointment pursuant to the regular selection process. He submits that when several candidates are appointed pursuant to a selection process, irrespective of their dates of joining within the prescribed period, the inter-se seniority of all the incumbents have to be fixed as per their merits position in the final select list. The seniority position of the petitioner having been rightly considered along with other similar incumbents as per their respective merit position, he contends that the writ petition is bereft of any merit, whatsoever. In support of the aforesaid, he relies upon the following decisions:

(i) ***Nabin Ch. Bordoloi -Vs- State of Assam and Ors.*** *reported in* ***(2003) 2 GLT 147;***

(ii) ***Anup Kumar Das (Dr.) -Vs- Sanjib Kakati (Dr.) and Ors.;*** reported in ***(2000) 1 GLT 429*** and

(iii) ***Malook Singh and Ors. -Vs- State of Punjab and Ors.,*** reported in ***(2022) 17 SCC 765.***

10. I have given my prudent considerations to the strenuous arguments advanced by the learned counsels for the contending parties and have perused the materials available on record. I have also duly considered the case laws cited at the bar.

11. It appears that the petitioner was initially appointed as Assistant Jailor on an ad hoc basis vide order dated 22.09.1994, under Regulation 3F of the 1951 Regulation, for a period of three months, and his service was extended from time to time thereafter. Subsequently, pursuant to a regular recruitment process, the petitioner was appointed to the post of Assistant Jailor vide order dated 22.12.2000, upon being selected on the basis of his comparative merit in the written examination and viva voce. However, while determining the inter se seniority of the employees in the cadre, the petitioner's seniority was reckoned from the date of his regular appointment, i.e., 22.12.2000. Consequently, certain employees junior to the petitioner were placed above him in the relevant gradation list.

12. The short question that arises for determination in the present writ petition is whether the petitioner's period of ad hoc service under Regulation 3F of the 1951 Regulation can be counted towards determining his seniority in the cadre of Assistant Jailor following his regular appointment. It is pertinent to note that, upon publication of the gradation list following the regular selection process, the petitioner was placed at Sl. No. 28, whereas the employees claiming seniority over him were placed at Sl. Nos. 8 to 14. Being aggrieved thereby, the petitioner approached this Court by filing WP(C) No. 4932/2012. The said writ petition was disposed of vide judgment and order dated 06.12.2018, whereby this Court directed the Inspector General of Prisons,

Assam, to consider the petitioner's claim in the light of the guidelines contained in the communication dated 17.11.2000, after affording an opportunity of hearing to all concerned parties, within a period of two months. Pursuant thereto, the petitioner submitted a representation dated 02.01.2020 before the Inspector General of Prisons, Assam. As the said representation was not considered, the petitioner submitted another representation dated 16.11.2024 before the Secretary to the Government of Assam, Home and Political Department. It is pertinent to note that, in the latter representation, the petitioner specifically reiterated that, in the earlier writ petition, he had sought fixation of his seniority with effect from the date of his initial appointment as Assistant Jailor at Hailakandi. However, instead of adjudicating upon the claim of seniority, this Court had deemed it appropriate to direct the respondent authorities to consider the matter in accordance with the applicable guidelines and after hearing the parties concerned.

13. In the affidavit-in-opposition filed by the State respondents, it has been contended that the judgment and order dated 06.12.2018 passed by this Court in WP(C) No. 4932/2012 was duly complied with by affording the petitioner and the concerned private respondents an opportunity of hearing on 31.12.2020. The relevant portion of paragraph 14 of the affidavit-in-opposition is extracted hereinbelow:

> "*14. That with regard to the statement made in paragraph 14 of the writ petition the deponent states that the Hon'ble High Court vide order dated 06/12/2018, in WP(C) No. 4932/2012 directed the Inspector General of Prisons, Assam to consider the case of the petitioners who were claiming seniority by applying the guidelines laid down in the communication dtd. 17/11/2000 i.e. Letter No. HMB.105/99/60/ Dtd. 17th Nov/2000 of Home (B) Department, Govt. of Assam wherein along with others it was stated that as follows consequent upon the encadrement the incumbents of the posts of Prison Welfare Officer will be included in the cadre of Asst. Jailor and their inter se seniority will be below the existing junior most regular members of Asst. Jailor cadre henceforth" which was decided in state cabinet meeting. At that time the petitioner was*

serving as ad-hoc Asst. Jailor and not as regular Asst. Jailor. And while it was ordered by the Hon'ble Court in WP(C) No. 4932/2012 that while undertaking the said exercise, the Inspector General of Prisons, Assam may afford both the parties an opportunity of hearing before passing any order and communicate the same to the respective parties. The said order of the Hon'ble Court was duly complied and the petitioners and in service respondents No. 7, 9, 10 among the Respondent No. 6 to 12 were given a fair chance of hearing on 31/12/2020 (vide letter No. PRI.245/2012/17 dated 22/12/2020, as per Hon'ble High Court order, and the petitioner along with the said respondents of the writ petition agree in writing on 31/12/2020. Thus there is no lacuna in following the Hon'ble Court Order by the Inspector General of Prisons, Assam. After that the petitioner Sri Tapash Kr. Bhuyan remained silent till submission of a representation to the Inspector General of Prisons, Assam."

14. It appears from the materials on record that, pursuant to the aforesaid judgment and order, the Inspector General of Prisons, Assam, Khanapara, issued a communication dated 22.12.2020, calling upon the petitioner and the concerned private respondents to appear for a hearing on 31.12.2020 in connection with their inter se seniority. Following the hearing, the petitioner and the concerned private respondents jointly submitted a letter dated 31.12.2020, which reads as follows:

"*To,*

The Inspector General of Prisons, Assam,

Khanapara, Guwahati-22

Sub: Regarding amicable settlement on hearing dated 31.12.2020.

Madam,

With reference to the subject cited above, I/we have the honor to state that as per discussion before the hearing Committee dated 31-12-2020, the points/advice given from your kind end is agreed by us and there is no any objection as the honor deems fit and proper.

This is for favor of kind information and obliged."

15. A perusal of the aforesaid letter indicates that the petitioner and the

concerned private respondents expressed their agreement with the points or advice communicated during the hearing and stated that they had no objection to the course of action deemed appropriate by the authority. The State respondents have relied upon the said letter as evidence of an amicable settlement of the dispute relating to inter se seniority. However, the letter does not disclose the specific terms of the alleged settlement or the manner in which the petitioner's claim to seniority was determined. Further, the said letter dated 31.12.2020, annexed as Annexure-F to the affidavit-in-opposition is not followed by any speaking order as directed by the earlier judicial order.

Subsequently, the petitioner submitted a representation dated 16.11.2024 before the Secretary to the Government of Assam, Home and Political Department, reiterating his claim that his seniority ought to be reckoned from the date of his initial appointment. He also pointed out that a vacancy in the post of Deputy Inspector General of Prisons, Assam, was expected to arise on 31.12.2024 and contended that he would have been eligible for consideration for the said post had his seniority been determined accordingly.

16. Though the petitioner has categorically stated in his representation dated 16.11.2024 that his claim for counting his seniority with effect from the date of his initial appointment has not been considered, despite the directions issued by this Court, the averments made in and the documents annexed to the affidavit-in-opposition filed by the State respondents on 15.05.2025 indicate that a hearing was conducted by the Inspector General of Prisons, Assam, Khanapara, pursuant to the judicial order passed by this Court in the earlier writ petition. It further appears that the petitioner participated in the said hearing and expressed his agreement to the amicable settlement of the dispute. However, the materials on record do not disclose the specific terms and conditions of the alleged settlement arrived at between the parties. Be that as it may, since the relief sought for in the present writ petition is confined to the disposal of the petitioner's representation dated 16.11.2024, which

admittedly remains pending consideration, this Court, without entering into the merits of the petitioner's claim for seniority, deems it appropriate to direct the respondent authorities to consider the grievances raised therein and dispose of the said representation by passing a speaking order, in accordance with law within a period of one month from the date of receipt of certified copy of this order.

17. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant

Pranab Kumar Deka

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